Connecticut
Fair Housing Center

STATEMENT OF ATTORNEY JEFFREY GENTES
In Support of Governor's Bill 6355

Co-chairs Leone and Tong, Members of the Committee, thank you for allowing me to speak today. My name is Jeff Gentes. I manage the foreclosure prevention work at Connecticut Fair Housing Center and co-supervise the foreclosure clinic at Yale Law School. I am here today in strong support of Governor's Bill 6355. I am here on behalf of the homeowners we represent in court, and the thousands of Connecticut homeowners facing foreclosure, from every single legislative district, with whom we have spoken.

The foreclosure mediation program has been great for Connecticut and, now, more than 10,000 households can say they kept their home, thanks to the program. The Bill reflects one thing, though, that all sides can agree upon: mediation often takes too long. This Bill recognizes that delay is a problem for both sides. Delay is a problem for a community bank with a legitimate reason to foreclose, and can honestly and accurately say that nothing can be done for the homeowner. Delay is also a problem for homeowners who desperately want resolution.

From what we see every day, delay is principally the fault of large national mortgage servicers. Sometimes homeowners can be their own worst enemy, or be delaying the inevitable, and sometimes local banks or their attorneys can pose problems. But the overwhelming majority of problems are caused by large national servicers who lack the incentive to comply with the law. By forcing these banks to send someone with settlement authority to mediation rather than a mere document collector, by forcing banks to comply with federal modification programs and the rules put in place by Fannie and Freddie, by refusing to allow endless requests for documents, and by enforcing their compliance with the Attorney General state-federal mortgage settlement, we can give homeowners a hand in getting the right result more quickly. Right now, the only remedy that homeowners or even mediators have by statute for an unproductive session are to waive the day's attorney's fees or ask for another mediation. Clearly more is needed when banks fail to mediate in good faith.

Both sides should see a benefit to the judicial hearing component of the bill. If a homeowner can't submit the documents in time, or if it's plain that no program can help the homeowner after 3 sessions – which by then should be obvious to the bank – then a bank will have its request to terminate mediation being heard in court. If more than six months have passed, a judge does decide to extend mediation, he or she will be required to state the reasons for the extension rather than a mere "GRANTED." Likewise, especially for homeowners with large national banks, having the chance to explain what's happening to a judge could increase the chances the judge will pressure the bank to come to a decision either by merely having the hearing or through the menu of penalties available to a judge. This bill also sends a message

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from the legislature to the courts: delay is bad for all sides, and these cases must be processed more quickly in order for our housing market to recover.

Five components of the bill merit additional explanation.

1. <u>Settlement Authority</u>

Right now, the statute requires a bank to either mediate in person or participate by phone if its in-person attorney has "authority to agree to a proposed settlement." In practice, the attorney can only have that authority with the consent of her client, and so the bank rep must have that settlement authority. This practically never happens with large banks. Instead there's a mediation representative on the phone, who usually isn't in charge of the file and instead relies on someone else's work and notes, and that "underwriter" or "negotiator" is relying on rules they didn't draft or can't change, waive, or negotiate. So homeowners make proposed settlements by requesting loan modifications under certain programs, and bank representatives are unable to respond in any meaningful way. The bill as drafted makes it clear that the bank must have a representative with actual settlement authority, and provides that the mediator must track whether the representative had settlement authority. Of course, settlement authority has not been an issue with homeowners – they can settle their own case. This bill ensures they'll have a reasonable opportunity to consult with a non-borrower spouse, an attorney, or a housing counselor if the bank makes an offer during mediation.

2. <u>Section 6</u>

Right now, there is hardly any way for a borrower to hold one of the "big 5" banks accountable for violating the servicing standards contained in the AG settlement, standards which are in place for the next two-and-a-half years. This bill would allow homeowners to use violations to bring mediation closer to resolution, and to defend against wrongful foreclosures, at least for those five banks. Without the bill, all that's possible is that the banks pay penalties to the states under the terms of the agreement. That doesn't help homeowners with their individual cases.

This section also would bring Connecticut up to the level of its peers in judicial foreclosure states. While it has a great mediation program, Connecticut's foreclosure law is unusually slanted against homeowners. Connecticut and Delaware are the only judicial foreclosure states (out of about 23) in which homeowners are not allowed, or at least not without great difficulty and a considerable uphill battle in the courts, to challenge servicing practices in their cases. Connecticut homeowners should be treated like homeowners in other judicial foreclosure states, and Section 6 would allow that to happen.

3. <u>Section 5 – Vacant and Abandoned Properties</u>

Right now, banks handle foreclosures on vacant and abandoned properties in a variety of ways. Local banks tend to move quickly, and the courts meet their desire for an expeditious process – as fast as 70 days under the law. Larger banks take wildly different paths, often taking several months or even years to move forward with foreclosures. For instance, after a client of the Center moved out of his house to an apartment in March 2011, he stipulated to a foreclosure date in June. The bank still had to move forward and finish the foreclosure in order to complete the deal. Nearly two years have gone by, and the bank still hasn't done anything. The property remains vacant.

For the banks who do want to move forward on a foreclosure, the bill provides two things. One, it allows the process to move even more quickly: 56 days. Two, it contemplates an affidavit that confirms to a judge that the foreclosure judgment should be granted as quickly as possible and confirms that the legislature has prioritized expeditious foreclosures of vacant and abandoned properties before they deteriorate and become a source of blight to their neighborhoods.

4. Recording Fees

Out of recognition of the lost revenue that the mortgage industry's practices have yielded, thanks largely to the creation of "MERS," this bill includes a practice that would ensure the industry would pay each time a mortgage is transferred. This would conform the letter of the law to its intent. We often receive calls from homeowners who are confused when they learn of their loan's investor, either through the court papers or during mediation. They often research their town's land records and see nothing that makes sense – the loan investor isn't on the land records, especially before a foreclosure starts. Requiring recording would help put the public, and the homeowners, on notice of a change of their mortgage's ownership.

5. "Plain English" requirement for account histories

In 2011 the mediation statute was amended to require that the parties exchange documents prior to the first mediation session. Homeowners send their financial information, and banks are supposed to send contact information for a particular individual at the bank and a 12-month account history.

I've attached a sample account history that one of my clients received. It is worthless as presented, though technically not illegal. While it was certainly intended, apparently banks need to be told that the account history needs to be comprehensible. The bill would fix this problem going forward.

Thank you for considering this important bill, and please do not hesitate to let me know if I can be of assistance as you consider it. We sincerely hope that you support the strongest possible version of this bill.

LOAN #: [redacted] 2 CUSTOMER: [redacted] TYP: 001

DEPT ID: ALL (ALL/SEL/ACRONYM) BAL: N TYPE: F (F=FINANCIAL,D=DATAMSGS,B=BOTH)

START DATE: 01/24/12 STOP DATE: 00/00/00 PRINT: N (Y/N) PRINTER:

INV: 30000/00000 BLK: 029/000 UNAP: 1106.40 CD: PP

PDTO: 05/01/10 PBAL: 177880.72 EBAL: -9439.38 WARN: 5 LOCK: 9 STOP: 00

I-YTD: 0.00 TIED:

DATE TRAN PDTO TRAN AMT PRIN INT ESC L/C OT-AMT

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093010 FEI 0501 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERI

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39-FRCLSR ATTY FEE FATT-FORECLOSURE ATTY FEE

081810 DEB 35.00 400001794 HUNT LEIBE 235709 100818

52-FORECLOSURE COSTS CERT-CERTIFIED COPIES

PF1-DETAIL PF3-RETURN PF4-ADD NOTE PF5-CHG PRTY

081210 PA 0501 .00 388.64 297.12 469.42 .00 .

UNAPPL -1155.18

081210 PA 0401 .00 388.00 297.76 469.42 .00 .

UNAPPL -1155.18

081210 PA 0301 .00 387.35 298.41 469.42 .00 .

UNAPPL -1155.18

081210 AA3 0201 PDT FROM 1100812 TO 1100201

081210 AA4 0812 ESC-FROM 370.11 TO 469.42

081210 AA1 0812 PI-FROM 1072.68 TO 685.76

081210 AA2 0812 INT FROM 6.24000 TO 2.00000

081210 FER 0812 .00 44-REINSTMNT TO EXPENSE MISC-MISCELLANEOUS

UNAPPL 178.50

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UNAPPL -178.50

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081210 SR 0812 .00 .00 .00 408.12 .00 .00

UNAPPL -408.12

081210 AA5 0812 LST PYT FROM 1100428 TO 1100201

081210 AA3 0812 PDT FROM 1090320 TO 1100812

081210 AA9 0320 TERM FROM 360 TO 343

081210 AA8 0320 MAT DATE FROM 13509 TO 13903

081110 SR 0320 1442.79 .00 .00 .00 .00 .00

UNAPPL 1442.79

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081110 SR 0420 1442.79 .00 .00 .00 .00 .00

UNAPPL 1442.79

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UNAPPL -1442.79

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UNAPPL -1442.79

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042610 SR 0201 178.50 .00 .00 -408.12 .00 .00

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042610 SR 0201 1133.86 .00 .00 .00 .00 .00

UNAPPL 1133.86

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UNAPPL 1170.36

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031210 RP 0301 1133.86 387.35 298.41 448.10 .00 .00

021610 AA9 0201 TERM FROM 360 TO 343

021610 AA8 0201 MAT DATE FROM 13509 TO 13809

021610 AA4 0201 ESC-FROM 370.11 TO 469.42

021610 AA1 0201 PI-FROM 1072.68 TO 685.76

021610 AA2 0201 INT FROM 6.24000 TO 2.00000

021610 SRZ 0201 3397.65 .00 .00 3397.65 .00 .00

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UNAPPL 178.50

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UNAPPL 1059.63

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100308 RP 0920 1472.43 198.80 873.88 399.75 .00 .00

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072908 RP 0720 1472.43 196.75 875.93 399.75 .00 .00

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050108 RP 0420 1472.43 193.71 878.97 399.75 .00 .00

032908 RP 0320 1472.43 192.71 879.97 399.75 .00 .00

022908 RP 0220 1433.99 191.71 880.97 361.31 .00 .00

013108 RP 0120 1433.99 190.72 881.96 361.31 .00 .00

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PERCENT 100.0000

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